

FERGUSON TOWNSHIP ZONING HEARING BOARD
REGULAR MEETING MINUTES
Tuesday, May 23, 2023
7:00 p.m.

ATTENDANCE

The Ferguson Township Zoning Hearing Board held a regular meeting on Tuesday, May 23, 2023, at the Ferguson Township Municipal Building. In attendance were:

Board

Susan Buda, Chair
Stefanie Rocco, Vice Chair
Swamy Anantheswaran, Secretary
Robert Strouse
Jeff Stover, ZHB Solicitor

Staff

Jeff Ressler, Zoning Administrator
Liza Ruhf, Recording Secretary
Jenna Wargo, Director of Planning and Zoning
Elizabeth Dupuis, Township Solicitor

Others in attendance: Merle Eyer, 1st Applicant; Melanie Eyer; Missy Schoonover, Executive Director Centre County Housing and Land Trust; Charles Suhr, Esquire, representing 1004 West College, LLC; Alex Sahakian, 2nd Applicant and owner 1004 West College, LLC; Laura Dininni, resident; abutting property owners and neighbors of 1004 W. College Avenue

I. CALL TO ORDER

The Ferguson Township Zoning Hearing Board Regular Meeting was called to order on Tuesday, May 23, 2023, at 7:04 p.m.

II. PLEDGE OF ALLEGIANCE

III. CITIZEN INPUT

No citizen input was heard.

IV. INTRODUCTION OF BOARD MEMBERS

V. SWEARING IN OF THOSE WHO WISH TO TESTIFY

Merle Eyer and Jeff Ressler were sworn in to testify for the first hearing; Jenna Wargo and Alex Sahakian were sworn in to testify for the second hearing.

VI. ZONING HEARING BOARD SOLICITOR EXPLAINS THE BASIS FOR GRANTING A VARIANCE

Mr. Jeff Stover, Esquire, presented the standards for granting a variance.

VII. ZONING ADMINISTRATOR EXPLAINS THE BASIS OF THE VARIANCE

Mr. Ressler stated that the property that was the subject of the hearing was located at 2616 Tadpole Road, Pennsylvania Furnace, tax parcel 24-006-046B. The property was owned by Merle Eyer of 734 S. Nixon Road, Pine Grove Mills, Pennsylvania. The property was zoned RR – Rural Residential. The property contained a camp structure.

The Applicant was requesting a variance to Chapter 27-209.1 to construct a 20 x 10 foot addition on the west side of the camp. The required side yard setback in the RR Zoning District was thirty

(30) feet. The proposed addition would extend ten (10) feet into the required thirty (30) foot setback. Mr. Ressler stated that the camp structure had been built prior to the setback regulations. Mr. Ressler directed everyone to the pictures of the camp that he had provided. Mr. Ressler stated that Chapter 27-209.1 read that no structure shall be placed in the front, side or rear yard setback areas specified for each use, except where specifically permitted below or in other sections of this chapter. Mr. Ressler stated that the lot was 100 x 160 feet, which was less than one (1) acre.

VIII. VARIANCE REQUEST OF MERLE EYER, 2616 TADPOLE ROAD, PENNSYLVANIA FURNACE

Mr. Eyer stated that the camp had been built before the zoning regulations had come into effect and the lot was only one hundred (100) feet wide and the current camp structure was thirty (30) feet long. He reported that they spend most of the winter at the camp and that the addition would be to the bedroom; currently the bed extended from wall to wall, so they had to climb over the bed to get out. They would like to make it more handicapped accessible also, as his wife had back issues and would need a walker eventually. Mr. Eyer stated that the property was surrounded by woods and that there were no other residences; the extension would be 20 x 10 feet and the west end of the camp was exactly thirty (30) feet from the property line. Mr. Eyer reported that if the addition were to be on the front of the camp, the entire interior would need to be changed, including the plumbing, and the sewer was in the front yard. There were limited options for the expansion. Mr. Ressler stated that the lot was a substandard lot, as a single family dwelling minimum lot size was one (1) acre. The Board discussed the matter and felt that it created a unique hardship.

Ms. Rocco moved that the Ferguson Township Zoning Hearing Board grant a variance for tax parcel 24-006-046B to Chapter 27-209.1 to allow a 20 x 10 foot addition to the current structure, as shown in the application, with the condition that if the structure were to be rebuilt in the future that it would fall within the setback regulations. Mr. Anantheswaran seconded the motion. The motion passed unanimously.

IX. ZONING HEARING BOARD SOLICITOR EXPLAINS THE BASIS FOR GRANTING AN APPEAL

Mr. Jeff Stover, Esquire, presented the basis for granting an appeal.

X. ZONING ADMINISTRATOR EXPLAINS THE BASIS OF THE APPEAL

Mr. Ressler stated that the location of the property was 1004 West College Avenue, tax parcel 24-002A-057. The property was zoned TS – Terraced Streetscape. The property was 1.54 acres and owned by 1004 West College, LLC.

The Applicant was appealing the Zoning Administrator's determination regarding Chapter 27-304.3.B.(3) and that of the 2023 Fee in lieu being applied to the plan. The Applicant also was

filing a substantive validity challenge to the provisions of Chapter 27-716 that requires that Workforce Housing must be provided or a fee in lieu must be paid.

XI. APPEAL REQUEST OF 1004 WEST COLLEGE, LLC, 1004 W. COLLEGE AVENUE

Counsel for the Applicant, Charles Suhr, stated that he was with Stevens and Lee, out of Harrisburg. He stated that the Applicant, 1004 West College, LLC, was the owner of a 1.5 acre tract of land located at 1004 West College Avenue within the Township and which was currently zoned TS - Terraced Streetscape. The Applicant was proposing to construct a 7-story, 75 foot-tall, mixed-use building, with parking in the basement level, retail on the first level, and one hundred seven (107) apartments above, which was a permitted use within that zoning district. Mr. Suhr stated that it was a similar project to the mixed-use building that was being constructed adjacent to it. The Land Development Plan had been submitted in March of 2022 and since that time the Applicant had been working through design comments from staff and there had been revised plans submitted, the last being in January of 2023. The last review letter from the Township had been dated February 24, 2023, and had prompted the appeal.

Mr. Suhr stated that the issues for the appeal related to two distinct determinations that had been made by the Zoning Officer. The first determination was regarding the proposed building height; the height limit within the TS District would be fifty-five (55) feet, but with incentives, the height could be increased to seventy-five (75) feet. The applicable incentive was that 15% of the total units be set aside for age-restricted units; the project had proposed that 15% of the units be set aside as such, therefore, the proposed building height on the Land Development Plan had been shown as seventy-five (75) feet. The staff determination that they were appealing was that the incentive, which had given the extra twenty (20) feet, was invalid. The maximum building height would be fifty-five (55) feet, so the plans would not be in compliance and the project would need to be reworked. The second determination was related to workforce housing, in particular the fee in lieu. Mr. Suhr stated that the workforce housing provisions in the Township Ordinance were mandatory for this type of project; it would be required that workforce housing apartments be provided within the project, for which the developer would receive less rent, or the developer could pay a fee in lieu of having those apartments. Mr. Suhr explained that issue was that the fee in lieu had doubled from 2022 to 2023 and that staff had determined that the 2023 fee would apply to the project that had been filed in March of 2022.

Mr. Suhr summarized their application narrative and stated that they believed that their proposal for the age-restricted units complied with the language of the incentive and also that the Zoning Officer had no authority to declare a portion of the zoning ordinance invalid. As to the fee in lieu, they believed that the pending Land Development Plan was protected from intervening ordinances

that adversely affected the right of a developer to commence and complete a project. In their opinion, the now doubled fee would have a material impact on the Development and they believed it could not be applied. Mr. Suhr continued that they believed that the fee in lieu was an invalid tax on developers, as opposed to a general tax that would be spread amongst residents for the benefit of public good.

Mr. Suhr handed out exhibit packets and went through them with Mr. Sahakian providing testimony.

Mr. Sahakian also reported that zoning was a foundational aspect of what they look at when developing real estate. They had liked the intent of the Terraced Streetscape District, including increasing density and creating housing for different ages and incomes. In particular, they had liked the number of incentives within the district that would allow them to increase the height of the building. They had proposed, at the time of submission of their plan, to utilize the incentive that had been in Chapter 27-304.3.B.(3), which had read “If 15% of the total residential units in a vertical mixed-use building are established and maintained as age-restricted units, an additional 20 feet may be added to the permitted maximum”, and they had specifically proposed that in 15% of their units they would require one resident in that unit to be over the age of 21, which in their thinking would ensure a mixture of young professionals, graduate students, and undergrads. Mr. Sahakian then read from the Ordinance the definition at the time of “age-restricted” as “housing that restricts ownership and/or residency to individuals of a certain age.” Mr. Sahakian then discussed the response from the Township dated February 24, 2023, after they had resubmitted their land development plans. He believed it had stated that staff had determined that for a unit to be “age-restricted” that it had to be limited to people who were 55 and older, and in doing so, it would make the incentive illegal, thereby the Ordinance and the incentive itself had been deemed illegal and they would not be able to utilize that incentive for the increased height.

The Board questioned Mr. Sahakian regarding their decision to use “21” as the age for their age-restricted units and then they discussed how that might or might not conform to the intent of the Ordinance to provide housing for different age groups and income levels.

Ms. Dupuis pointed out that the Workforce Housing Ordinance actually provided for three options, in that in addition to choosing to include the workforce units within the building or pay the fee in lieu, one could choose to build the units off-site.

Ms. Wargo then handed out exhibit packets. Ms. Wargo stated that the Applicant had submitted a Land Development Plan for a building that would be seventy-five (75) feet in height and that they were appealing her determination that the building height incentive that previously had been found in Chapter 27-304.3.B.(3) of the Ferguson Township Code of Ordinances could not be utilized in

the proposed development. In addition, the Applicant was appealing the determination that the 2023 Workforce Housing fee in lieu would be applicable to the plan. Ms. Wargo reported that on February 3, 2022, staff had held a pre-application meeting with the Applicant where they had enquired about the building height incentive providing they establish and maintain 15% of the units as age-restricted units; staff had informed them that the incentive could be utilized for housing of persons 55 years and older. The Applicant had indicated that the Township's definition of "age-restricted" at the time had not specified an age range. Ms. Wargo stated that it had been after this meeting that staff had recognized the clerical error in the definition of "age-restricted" in the Ordinance at that time, in addition to the invalidity of the building height incentive, both which then had been updated by Ordinance 1076 on March 15, 2022. Furthermore, on February 11, 2022, staff had emailed the Applicant summarizing the meeting and restating that even though the definition of "age-restricted" had not specified an age range, the intent of the incentive had been to designate units for residents 55 and older, as they were a protected class per HUD's definition, and informing them that if they were to designate any other age group that that might make the Applicant vulnerable to a potential lawsuit.

Ms. Wargo reported that staff had found that the clerical error had occurred during the Zoning Ordinance Rewrite Project in 2019, where previously the "age-restricted" definition had stated "housing that restricts ownership and residency to individuals 55 and older" and had been in effect since the Terraced Streetscape (TS) Ordinance had been adopted originally in 2011. Staff had concluded that it had been a clerical error, as the TS District had been the only district that provided this definition and the TS District had been left out of the rewrite specifically.

Additionally, the definition could be contextualized within the Fair Housing Act, which prohibits discrimination based on familial status (families with minor children), but provides an exemption for housing of older persons (55 and older). In order to qualify for the exemption, the housing must comply with HUD's regulatory requirements, one of which requires that 80% of the total units be designated as 55 and older. The Township's Ordinance had had 15% of the residents as a provision in their "age-restricted" incentive, which would have made it a violation of the Fair Housing Act, thus prompting the Township to remove the invalid incentive. Ms. Wargo stated that regardless, complying with a local ordinance would not be a defense to permitting a discriminatory housing practice.

Ms. Wargo reported that the Applicant had filed a Land Development Plan application on March 14, 2022, which had included a plan note that they would be utilizing the building height incentive from Chapter 27-304.3.B.(3) by designating 15% of the units as age-restricted, and which they later had clarified as restricting the units to include at least one resident 21 or older. After the final

submission by the Applicant on January 31, 2023, staff had provided a review letter back to the Applicant with a determination that the Applicant's utilization of Chapter 27-304.3.B.(3) building height incentive would not meet the intent or spirit of the ordinance and nor had it been provided for specifically in the Ordinance, in addition, staff had determined the invalidity of the incentive. Ms. Wargo also stated that after the resubmission on January 31, 2023, staff had informed the applicant of the updated workforce housing fee in lieu numbers that had been adopted by resolution; the PA MPC protects against amendments to ordinances that may affect applicants adversely, but no ordinances had been amended in updating the fee schedule.

Ms. Rocco moved that the Ferguson Township Zoning Hearing Board adjourn the hearing and continue on June 13, 2023. Mr. Anantheswaran seconded the motion. The motion passed unanimously.

XII. ZONING HEARING BOARD SOLICITOR EXPLAINS THE BASIS FOR GRANTING A VALIDITY CHALLENGE

The Validity Challenge was not heard.

XIII. ZONING ADMINISTRATOR EXPLAINS THE BASIS OF THE VALIDITY CHALLENGE

The Validity Challenge was not heard.

XIV. VALIDITY CHALLENGE OF 1004 WEST COLLEGE, LLC, 1004 W. COLLEGE AVENUE

The Validity Challenge was not heard.

XV. APPROVAL OF THE MEETING MINUTES FROM APRIL 25, 2023

Ms. Rocco moved that the Ferguson Township Zoning Hearing Board approve the April 25, 2023, Regular Meeting Minutes and the April 25, 2023, Organizational Meeting Minutes. Mr. Anantheswaran seconded the motion. The motion passed unanimously.

XVI. ADJOURNMENT

The Ferguson Township Zoning Hearing Board Regular Meeting was adjourned on Tuesday, May 23, 2023, at 10:10 p.m.

RESPECTFULLY SUBMITTED,



Swamy Anantheswaran, Secretary
Ferguson Township Zoning Hearing Board